IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8189 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORP.

Versus

A M SHAIKH

Appearance:

1. Special Civil Application No. 8189 of 2001

MR ASHISH H SHAH for Petitioner No. 1

..... for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 11/03/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Shah for the petitioner. By way of this petition, the petitioner is challenging the award made by the Industrial Tribunal at

Nadiad in Reference (IT) No. 456 of 1998 (Old No. 393 of 1994) dated 8th August, 2001 wherein the Industrial Tribunal, Nadiad has granted benefit of permanency with all consequential benefits to the Off Day Reliever Watchman with effect from 14th October, 1994 and from the date of completion of 240 days from the date of initial appointment and retirement benefits were also ordered to be granted by the tribunal.

Learned advocate Mr. Shah has submitted that the written statement to the statement of claim was filed by the petitioner corporation wherein it was contended that the appointment of the respondent workman was back door entry since he was not selected by the selection committee in accordance with the recruitment procedure and service rules of the ST Corporation and on that basis, it was contended before the tribunal that the respondent was not appointed at all and, therefore, the tribunal has no power to grant the benefit of absorption to the respondent as it is contrary to the service rules. He has also submitted that the settlement dated 23rd November, 1984 is not applicable because it applies to the persons who are selected by the selection committee and working against the clearly vacant post and as and when their turn come, then after completion of 180 days of work, they are required to be brought to the time scale and that is not the position in the instant case and, therefore, the settlement is not applicable. However, these contentions raised by the petitioner corporation were not appreciated by the tribunal in their proper perspective and in doing so, the tribunal has committed an error and, therefore, present petition has been filed by the petitioner corporation challenging the award passed by the tribunal.

Before the tribunal, the respondent workman concerned has raised dispute through union that he worked in each month for more than 20 to 25 days and the nature of his work is permanent and, therefore, he is entitled for the benefit of permanency and absorption with all other consequential benefits from the date of his completing 240 days of work from the date of his initial entry in the corporation.

Before the tribunal, statement of claim was filed by the workman at Exh. 5 and written statement thereto was filed by the petitioner corporation at Exh. 14. Certain documents were produced by the respondent workman before the tribunal vide Exh. 16 and 17 and the corporation has produced certain documents. Thereafter, the respondent was examined before the tribunal at Exh.

8 and no witness has been examined for and on behalf of the corporation. As per the statement of claim filed by the workman before the tribunal, initially he was appointed as off day reliever watchman with effect from 28th June, 1979 and thereafter, he remained in service upto 1985 and thereafter, his services was terminated by the corporation against which industrial dispute was raised by the workman before the labour court at Nadiad by filing Reference No. 205 of 1985. Said reference was partly allowed by the labour court and reinstatement with continuity of service was granted in favour of the respondent. Said award of reinstatement made by the labour court concerned was challenged by the petitioner corporation before this Court by filing Special Civil Application NO. 13353 of 1993 which was rejected by this Court and thereafter, award of reinstatement made by the labour court as confirmed by this court was implemented by the corporation and the petitioner reinstated the workman in service. These are the facts which were not in dispute before the tribunal. Before the tribunal, the respondent has deposed that initially he was appointed at Petlad Depot as watchman with effect from 1978 and thereafter he was transferred at Sojitra Control Point and Petlad Depot was having three watchmen. As per his deposition before the labour court, during the course of the day, three watchmen would be required at the Depot; two watchmen are at Petlad and one is at Sojitra and thus, in all three watchmen are working. As per his deposition, there is shortage of one watchman at Petlad Depot and two at Sojitra. He has deposed that since 1978, he is getting work for 25 days every month and is working for eight hours in a day. He has deposed that the permanent workman will be receiving the wages on 7th of each month and he is not getting the wages equivalent to the permanent workman nor is he getting the other benefits like LTC, Medical etc. which are available to the permanent workmen. According to him, there is no any distinction between his work and the work of permanent watchman ; he is not getting the benefit of increment every year which permanent workmen is getting. He has worked for 180 days and 240 days every year. The oral evidence of the workman was cross examined on behalf of the corporation wherein it was submitted by him that he joined as reliever watchman on 28.6.79 and has submitted that his appointment has not been made through departmental selection committee. Thereafter, second party workman has submitted purshis at Exh. 18 closing his evidence and thereafter, no witness has been examined on behalf of the petitioner corporation and has submitted purshis at Exh. 15 closing its evidence and thereafter, the tribunal has heard the arguments of the

representatives for the respective parties.

The tribunal after considering the contentions raised by the parties before it and also after examining the evidence produced before it, has considered the question as to whether the respondent is entitled for the benefit of permanency or not in the post of watchman. The tribunal has come to the conclusion that though the evidence was clear which was deposed by the respondent workman, no contrary evidence has been produced for rebutting the evidence of the workman and, therefore, the tribunal believed the deposition of the watchman. In its written statement at Exh. 14 filed by the petitioner before the tribunal, it was pointed out by the workman that as and when the regular watchman proceeds on leave, respondent was being posted against such leave vacancy. However, the corporation has not produced total working days of the respondent workman from 1979 though such details are available with the corporation. The corporation has also not proved that the appointment of the respondent was made against only leave vacancy as alleged in its written statement. No evidence to that effect has been produced by the corporation for substantiating the averments made in its written statement. Therefore, in absence of such evidence, the tribunal has come to the conclusion that the respondent has worked for more than 25 days in each month from 1979. Thereafter, the tribunal considered that no recruitment rules were produced by the petitioner before it and no evidence to that effect was led by the corporation. In view of these facts and relying upon the decision of the Calcutta High Court as well as the apex court in case of Sundardas versus State Bank of Bengal reported in 1991 I LLN 1200 and the decision in case of Satyanarayan Sharma versus National Development Ltd. reported in 1990 II LLN 1180 and has observed that in this case, the concerned workman has been working as reliever watchman and no documentary evidence has been produced before the tribunal to show that he has been working in place of some one or as stop gap and in such circumstances, the workman has completed more than 240 days and there is no reason to disbelieve his say that he is doing the work which is permanent in nature. The tribunal has further observed that since the workman has been working in the first party corporation since 1979, provisions of the settlement entered into by the corporation with the recognized union shall also apply in the case of the workman and he is entitled to get the time scale of watchman with effect from the date of completing 180 days of service. In view of these facts before the tribunal, the tribunal has granted benefit from the date of the

reference 14th October, 1994 and for the purpose of retirement, from the date on which he completed 240 days from the date of his initial appointment.

This question has been considered by this Court in case of Orient Cerwool Ltd. versus Surendranagar Jilla Shramjivi Sangh reported in 2000(3) GLH 462. This Court, considering the decision of the apex court and the view taken by this Court in case of Kalol Municipality and Anr. v. Shantaben Kalidas and others reported in 1993(2) GLR 997, has come to the conclusion that the labour court has power to adjudicate the dispute if it is referred to it for adjudication by the appropriate Government under section 10(1) of the Industrial Disputes Act, 1947 and the labour court can vary the contract or can change the contract and for that, the labour court is not bound by any rules or regulations or service conditions of the company or corporation, as the case may be. The Court has further observed that the labour court is also having power even to create the service condition for the workmen Said question has been examined by the Andhra Pradesh High Court in case of Indian Bank Association v. Workmen, reported in 1998 (1) LLJ page 233. On page 233 of the report, it has been observed by the Andhra Pradesh High Court as under:

" Another ground of challenge of the impugned award was that the respondents were,in the guise of a reference, claiming modification of the terms of the agreements. This aspect was rejected as misconceived. The Court said it was well known as a part of the jurisdiction applicable to industrial law that Industrial Tribunals are vested with the jurisdiction of also modifying the contract of service and in the process may entitle the workmen to better rights and facilities. "

In above back ground of the facts, certain observations made by the Apex Court in case of CHIEF CONSERVATOR OF FOREST AND ANOTHER VS. JAGANNATH MARUTI Konthare reported in AIR 1996 SC 2898 are relevant with the facts of the case and therefore, observations made in para-12, 22 and 23, 28 and 29 are quoted as under :-

"12. We may not go by the labels, Let us reach the hub. And the same is that the dichotomy of sovereign and non-soverign functions does not really exist, it would all depend on the nature

of power and manner of its exercise, as observed in para 23 of NAGENDRA RAO'S CASE [1994 Air SCW 3753]. As per the decision in this case, one of the tests to determine whether the executive function is sovereign in nature is to find out whether the State is answerable for such action in Courts of law. It was stated by Sahai, J. that acts like defence of the country, raising armed forces and maintaining it, making peace or war, foreign, affairs, power to acquire and retain territory, are functions which are indicative or external sovereignty and are political in nature. They are, therefore, not amenable to the jurisdiction of ordinary civil court inasmuch as the State if immune from being used in such matters. But then, according to this decision the immunity ends there. It was then observed that in a welfare State, functions of the State are not only the defence of the country or administration of justice or maintaining law and order but extends to regulating and controlling the activities of people in almost every sphere, educational, commercial, social, economic, political and even marital. Because of this the demarcating line between sovereign and non sovereign powers has largely disappeared.

22. We have given out due thought to the aforesaid rival contentions and, according to us, the object of the State Act, inter alia, being prevention of certain unfair labour practices, the same would be thwarted or get frustrated if such a burden is placed on a workman which he cannot reasonably discharge. In our opinion, it would be permissible on facts of a particular case to draw the inference mentioned in the second part of the item, if badlis, casuals or temporaries are continued as such for years. We further state that the present was such a case inasmuch as from the materials on record we are satisfied that the 25 workmen who went to Industrial Court of Pune [and 15 to Industrial

Court, Ahmednagar] had been kept as casuals for long years with the primary object of depriving them the status of permanent employees inasmuch as giving of this status would have required the employer to pay the workmen at a rate higher than the one fixed under the Minimum Wages Act. We can think of no other possible object as, it may be remembered that the Pachgaon Parwati Scheme was intended to cater to the recreational and educational aspirations also of the populace, which are not ephemeral objects, but par excellence permanent. We would say the same about environment-pollution-care work of Ahmednagar, whose need is on increase because of increase in pollution. Permanency is thus writ large projects, persons are kept in jobs on casual basis for years the object manifests itself; no scrutiny is required. We, therefore, answer the second question also against the appellants.

23. The final point which needs our determination is regarding the reliefs granted by the Industrial Court, which is to make the workmen, in both the matters, permanent with all benefits of a permanent worker, which would include payment of wages etc. at the rate meant for a permanent worker.

28. In so far as the financial string on State exchequer is concerned, which submission is sought to be buttressed by Shri Dholakia by stating that in the Forest Department itself the casual employees are about 1.4 lacs and if all of them were to be regularized and paid at the rate applicable to permanent workmen, the financial involvement would be in the neighborhood of Rs.300 crores a very high figure indeed. We have not felt inclined to bear in mind this contention of Shri Dholakia as the same has been brought out almost from the hat. The argument relating to financial burden is one of despair or in terrorem. We have neither been impressed by the first

nor frightened by the second inasmuch as we do not intend that the view to be taken by us in these applies should apply, proprio vigore, to all causal labourers of the Forests Department or any other Department of the Government.

29. We wish to say further that if Shri Bhandare's submission is taken to its logical end, the justification for paying even minimum wages could wither away, leaving any employer, not to speak of model employer like the State, to exploit unemployed persons. To be fair to Shri Bhandare it may, however, be stated that the learned counsel did not extend his submission this far, but we find it difficult, to limit the submission of Shri Bhandare to payment of, say fair, wages, as distinguished from minimum wages. We have said so, because if a pay scale has been provided for permanent workmen that has been done by the State Government keeping in view its legal obligations and must be one which had been recommended by the State Pay Commission and accepted by the Government. We cannot deny this relief of permanency to the respondents workmen only because in that case they would be required to be paid wages meant for permanent workers. This right flows automatically from the relief of regularization to which no objection can reasonably be taken, as already pointed out. We would, however, observe that the relief made available to the respondents is not one which would be available ipso facto to all the casual employees either of the Forests Department or any other Department of the State. Claim of casual employees for permanency or for higher pay shall have to be decided on merits of their own cases."

I have also considered the case of ANZ Grindlays Bank Ltd. v. ANZ Grindlays Bank Employees Union & Anr. reported in 1998 II CLR 192, wherein the award made by the tribunal granting regularization to 27 workmen was confirmed by the learned Single Judge. In appeal, as regards the submission that there was no evidence that 27

workmen had worked for 240 days in a year, it has been held by the Court that the tribunalh as recorded a finding that the concerned workmen had worked for 240 days and that rightly an adverse inference was drawn as the appellant did not produce register of employees and the appeal was dismissed.

I have also considered the case of Wajid Ali and The Superintending Engineer and others reported in 1997 (77) FLR page 805, wherein the Allahabad High Court has observed that since the petitioner has completed more than 240 days service in 12 consecutive calendar months, his services shall be regularized.

I have considered the decision of the Karnataka High Court in case of Management of Tungbhadra Steel Products Ltd. v. A.B. Patil & Another, reported in 2000 (84) FLR page 565. I have also considered the case of GSRTC, Rajkot versus Workmen of ST In case of GSRTC, Rajkot versus Workmen of ST Corporation, Rajkot Division, reported in 1999 (4) GCD 3444 (Gujarat). This Court has observed as under in para 8 of the judgment :

"8. In the case of persons, who had already entered the service and have continued there for long for one reason or another, for some reason beyond their control and their claim to permanency can be considered in the light of statutory provisions made for the benefit of weaker section of society to combat against existing inequalities and to curb tendencies of exploitation and there is no question about constitutional validity of such provisions, the question has to be examined in that light. Neither there can be an automatic claim to regularization nor an automatic rejection to such claim. When a dispute is raised under the Industrial Disputes Act about terms and conditions of service, on the ground of remedying the evil of continued employment on casual or temporary basis not providing job security as well as results in payment of wages to such temporary hands much less than what is paid to regular or permanent hands, the question invites to be examined in the light of statutory provisions aimed to curb unfair labour practice and to provide a fair deal to such workmen in consonance with constitutional guarantees of equality and right to life, which include right to livelihood with dignity. To curb the tendency

of unfair conditions of labour, to cut across the unreasonableness inherent in long continuance as temporary employee not withstanding existence of permanent work resulting in discriminatory treatment in the matter of providing terms of condition for discharging permanent nature of work of the same kind between regular employees and those recruited as temporary ad hoc or casual the Courts intervened to enthuse a vibrant life to the meaning of right to life and personal liberty by alleviating from mere right to survival or animal existence to be right to life be composed of all aspects which makes a man's life meaningful and worth living by giving expansive meaning to Arts. 14 and 21."

This Court has also considered one apex court decision in para 21 which is reproduced as under:

"21. The matter directly arose before the Supreme Court in the context of provisions under the Industrial Disputes Act relating to unfair labour practice connected with continued long employment as casual or temporary hand. The claim of workmen to permanent status on the ground that their continued temporary status amounts to unfair labour practice was sought to be contested on the ground that mere allegation of continuance for long as casual for years is not sufficient to describe the same as unfair labour practice until it is shown by the workmen that such continuance is coupled with object to deny the benefits of permanent status to the concerned workmen. The plea was negatived by saying;

'We have given our due thought to the aforesaid rival contentions and, according to us, the object of the State Act, inter alia, being prevention of certain unfair labour practices, the same would be thwarted or get frustrated if such a burden is placed on a workmen which he cannot reasonably discharge. In our opinion, it would be permissible on facts of a particular case to draw the inference mentioned in the second part of the item, if badlis, casual or temporaries are continued as such for years. We further state that the present

was such a case inasmuch as from the materials on record, we are satisfied that the 25 workmen who went to Industrial Court of Pune (and 15 to Industrial Court, Ahmednagar) had been kept a casual for long years with the primary object of depriving them the status of permanent employees inasmuch as giving of this status would have required the employer to pay the workmen at a rate higher than the one fixed under the Minimum Wages Act. We can think of no other possible object..... Permanency is thus writ large on the face of both the types of work. If, even in such projects, persons are kept in jobs on casual basis for years the object manifests itself, no scrutiny is required.'"

In para 24 of the said decision, this Court has further observed as under:

"24. As has been stated by the Supreme court in the aforesaid decisions whether persons are shown to have been employed temporarily for long duration and it has also been shown that there exists permanent nature of work, to employ number of persons in that event, the irrestible conclusion is that continued temporary employment in respect of some of them on the jejune ground of non availability of vacancy is nothing but an unfair labour practice to deny the payment in the regular pay scales as are available to permanent employees to get the same work done on payment of minimum wages or lesser wages permissible to daily rated workmen for casual type or temporary type of work. Once this conclusion is reached, on the findings recorded by the Tribunal about which nothing has been said, namely that there exists permanent nature of work for five members at least and since July, 1996 only one person has been employed on permanent basis and that these person are discharging functions of wireman or helper wireman with effect from the date referred to above in the case of each workmen, no justification can be found to interfere with the order of regularization granting permanent status to these workmen with effect from 1.1.1996, when they have been found to be qualified to hold such

positions otherwise also. The case clearly falls within the ratio laid down by the Supreme Court in Pyara Singh case (supra) as well as Chief Conservator of Forests (supra). In this connection, reference may usefully be made to observations of Das Gupta, J. in Jaswal Sugar Mills Ltd. vs. Badri Prasad, 1961 (1) LLJ 649 (AIR 1967 SC 515) underlying the important requirement of job security of a workmen;

'The distinction between a permanent engagement of a work of a permanent nature and a temporary workman engaged on work of a permanent nature is that a temporary workman is engaged to fill in a need of temporary hands for e extra hands of permanent jobs..... When a workman is engaged in a work of permanent nature which lasts throughout the year, it is expected that he would continue permanently unless he has been engaged to fill in a temporary need.'

Recently, the Apex Court has also considered this aspect of regularization in service and also as regular pay scale to such daily wager employees in case of Gujarat Agricultural University v. Rathod Labhu Bechar reported in AIR 2001 SC 706. Relevant observations made in para-18, 19 and 30 are quoted as under :-

"18. What emerges is, all the respondent workmen are eligible for absorption on the facts of this case subject to any eligible qualification under the rule if any. Though no recruitment rules were filed in the proceedings either before the Tribunal or in the High Court but while proposing the scheme a copy of the recruitment rules for various cadres have been placed before us on behalf of the appellant University. This gives in column No.1 the serial No., in Column No.2 the name of the post, in column No.3 the pay scale, in column No.4 the age limit and in column NO.5 the qualification, serial No.10 deals with Peon and Class IV servants, serial No.13 deals with Operator-cum Mechanic, Serial No.14 deals with Chowkidar, Serial No.25 deals with Plumber and Serial No.33 deals with

Carpenter. This shows that recruitment rules did have these post in its ambit about which we are concerned, yet no posts were created. This proposed creation of post is churned out only after this long battle by the workmen as against the appellant. It was not expected from the institutions like the present appellant, especially when it si fully funded by the State Government that this process of absorption should have taken such a long time and to have yielded to it only after this long battle. This legal position is well known not only to the appellant but the State who is funding it, then why to do it only after Courts' intervention. It is true creation of post does involved financial implication. Hence financial health of a particular institution plays important role to which Courts also keep in mind. The Court does exercise its restrain where facts are such where extent of creation of post creates financial disability. But at this juncture we would like to express our note of caution, that this does not give largess to an institution to engage larger number of daily wage workers for long number of years without absorbing them or creating posts which constitutes an unfair labour practice. If finances are short engagement of such daily wage workers could only be for a short limited period and if continuous work is required it could only do so by creating permanent post. If finances are not available, take such work which is within financial mean. Why take advantage out of it at the cost of workers.

"19. One of the questions which is also up for our consideration is, apart from the fact who are to be regularize, what would be payable to these daily wage workers who have completed more than 10 years of continuous service. Submissions for the respondents is, that such daily wage workers should be paid the same minimum scale of pay as admissible to the regularized incumbent based on the

principle of `equal pay for equal work' Daily rated casual labour employed under P & T Department through Bhartiya Dak Tar Mazdoor Manch V. Union of India [AIR 1987 SC 2342 : 1988 Lab IC 37] [Supra] was a case of daily rated casual labourers of the P & T department doing work similar to that of the regular workers of the department. This Court held :

" ..... Even though the Directive Principle contained in Articles 38 and 39 [d] may not be enforceable as such be virtue of Article 37 but it may be relied upon by the petitioners to show that in the instant case they have been subjected to hostile discrimination. The State cannot deny at least the minimum pay in the pay scales of regularly employed workmen even though the Government may not be compelled to extend all the benefits enjoyed by regularly recruited employees. Such denial amounts to exploitation of labour. The Government cannot be take advantage of its dominant position and compel any worker to work even as a casual laborer on starvation wages. It may be that the casual laborer has agreed to work on such low wages ..... "

30. According to the State counter if absorption is made from 1-1-1993 of all those who have completed ten years of service as per Tribunal order, the payment towards arrears would be to the tune of 15 crores. Since in the proposed scheme, absorption is from 1st January, 2001, the State has already gained much more than this arrears of more than 15 crores. In this light and in the absence of details being placed before us, we are leaving the extent of creation of the posts on the State Government. We hope and trust, the Government who is the guardian of the people and is obliged under Article 38 of the Constitution, to secure a social order for the promotions of welfare of the people, to eliminate inequalities in status, will endeavour to

give maximum posts even at the first stage of absorption, and DDO the same in the same spirit for creating additional posts after enquiry as we are indicating hereunder. It is necessary that the State Government to set up an enquiry to find what further number of additional posts are required for regularizing such other daily rated workers, and after assessing it, to create such additional posts for their absorption. This exercise should be done by the State Government within a period of six months. The submission on behalf of the respondent is that those who are not regularized and are continuously working for 10 or more years with minimum of 240 days in each calender year, they should be paid minimum pay scale as admissible to an incumbent regularized on similar post doing similar work instead of minimum wages as prescribed by the Government. The dispute thus is, whether such workers to be paid minimum daily wage as Government prescribes as per the scheme or pay them the minimum pay scale admissible to such regularized worker without increment and other benefit. This Court in one set of decisions have said to regularize them in one block and pay them the same minimum pay scale as admissible to a regular employee as in; Surinder Singh Vs. Engineer-in-Chief, C.P.W.D., 1986 [1] SCC 639 " [AIR 1986 SC 584 : 1986 Lab IC 551], U.P. Income Tax Department Contingent Paid Staff Welfare Association v. Union of India, [1987] Supp SCC 658 : [AIR 1988 SC 517 : 1988 Lab IC 958], 1998 State of Punjab v. Devinder Singh, 1998 [9] SCC 595, Chief Conservator of Forests v. Jagannath Maruti Kndhare, 1996 [2] SCC 293 : [1996 AIR SCW 735 : AIR 1996 SC 2898 : 1996 Lab IC 967] and in other cases to absorb in a phased manner under a scheme which depends on the facts of each case. In Mool Raj Upadhayaya v. State of H.P. [1994 Supp [2] SCC 316] [Supra], this Court approved a scheme under which the daily wage workers whether skilled or unskilled who have not

completed 10 years of service was to be paid daily wage at the rates prescribed by the Government of H.P. from time to time for daily wage employees falling under Class III and IV till they are appointed regularly. Strong reliance is placed on behalf of the University on this case and also, looking to the fact that it has not impressive source of its own, being an Agricultural University, depending on the State fund, we hold they should be paid minimum wages as prescribed by the Government from time to time as proposed under the scheme. We approve both clauses 2 and 3 on the facts and circumstances of this case. In fact, in seeking minimum pay scale to such daily rated workers as admissible to a regular employee is based on the principle of `equal pay for equal work'. It is pertinent to refer, in this case the observations of the High Court :

".... Workmen are not claiming equal pay for equal work but they are claiming permanent status as Class IV employees as they are working and have gained more than sufficient experience in their work ... "

One more important aspect required to be noted is that in case of Off Day Reliever Watchman, this Court as well as the Division Bench of this Court had an occasion to consider the similar question and the petition filed by the Corporation has been rejected and such rejection of the petition filed by the corporation has been confirmed by the Division Bench of this Court. In case of GSRTC versus Bharatkumar Jashwantlal Rao, Workman (Special Civil Application No. 393 of 2000 decided by this Court on 27th January, 2000), similar question was examined by this Court and the petition filed by the Corporation was rejected. Thereafter, letters patent appeal no. 905 of 2000 was preferred by the Corporation against the order passed by the learned SIngle Judge of this Court wherein the Division Bench of this Court has rejected the letters patent appeal by order dated 12.3.2001. Thereafter, Special Leave Petition NO. 12607 of 2001 was preferred before the Hon'ble Supreme Court and the said special leave petition was also rejected by the Hon'ble Supreme Court. Same view has been taken by the learned Single Judge of this Court in Special Civil

Application No. 3757 of 1998 decided on 8th December, 1998. The case before hand is also involving the similar facts and circumstances.

In this case, it was not the case of the petitioner corporation that the respondent workman is not qualified for being appointed for the post in question. No such contention has been raised by the petitioner before the tribunal. Therefore, it cannot be said that the respondent is not qualified for the post in question.

In case of V.M. Chandra versus Union of India and others, 1999 AIR SCW 1234, similar question was examined by the apex court. The matter before the apex court was relating to absorption in service. The appellant before the apex court was engaged by the Railways as Technical Mate on casual basis. He was continued in service for years. His claim for absorption in Group C was rejected by the Railway Board on view that there is no post of Technical Mate. The apex court observed that the communication of the railway board itself is indicating the manner in which Technical Mate is to be absorbed. Therefore, considering the long period of service the appellant had put in and qualification possessed by the appellant, the appellant was held to be entitled to be absorbed. Rejection of the claim of the appellant by the Railway Board was held to be erroneous. Ultimately, considering the number of occasions the appellant had approached the tribunal and the authorities for relief, the apex court directed the respondents in the said matter to absorb the appellant as a Skilled Artisan in Grade III.

I have considered the submissions made by Mr. Shah, learned advocate for the petitioner. The submission made by Mr. Shah that the settlement is not applicable to the case of the respondent workman is required to be rejected. There is no question of having applicability of the settlement once the person is continued from 1979 and worked as Off Day Reliever Watchman for more than 20 years or so and now the Corporation is taking such a technical stand that the settlement is not applicable as it was a back door entry. If that is so, then, the Corporation was having full knowledge of it and itself had allowed such back door entry though there was ban against recruitment. If that was so, then what was the reason to employ the workman as off day reliever during the period of ban ? Whether any action has been taken against such erring officer who has employed the respondent workman during the period of such ban ? Who has allowed the respondent to have such back

door entry? When these pointed questions were asked by this Court, learned advocate Mr. Shah has not been able to answer the same. Once when the respondent was appointed by the corporation as off day reliever watchman and was allowed to continue for such a long period, now such a contention is being raised only with a view to deprive the workman of his legitimate rights to get absorption. What is the meaning of back door entry ? Simple meaning is that the recruitment procedure has not been followed. There is no answer to the question as to why such procedure has not been followed. Who had to follow such procedure ? If the workman has given an application to the corporation to employ him as Off Day Reliever Watchman, the corporation was having adequate time for scrutinizing such an application. Upon scrutiny, they could have rejected such an application or could have refused such an application but no such action has been taken and petitioner engaged the workman, continued him for such a long period and when the workman raised demand for regularization and absorption and time scale of the watchman, the corporation is now coming with such a plea. Such tactics on the part of the petitioner which is a public body is required to be deprecated. If according to the corporation, such appointment is against the recruitment rules and service conditions, then, the corporation should have taken appropriate action against the erring officer who has engaged the workman and continued him for such a long period as Off Day Reliever Watchman. On the contrary, there is a practice to engage and appoint off day watchman prevailing in the corporation but not to make them permanent after 20 years is clear unfair labour practice on the part of the petitioner corporation which is a public body and a "State" within the meaning of Article 12 of the Constitution of India. In view of this, law has been amended by the Legislature by introducing Schedule-V by way of amendment in the Act of 1947. As per Item 10 of Schedule - V, to employ workmen as badlis, casuals, temporaries and to continue them as such for years with the object to deprive them of the status of permanent workman is unfair labour practice. Such activities or action by statutory provisions has been considered as unfair labour practice and, therefore, when public body is adopting such unfair practice, same cannot be entertained and encouraged by this Court and, therefore, considering all these aspects of the matter, according to my view, such unfair practice by the petitioner cannot be entertained. I have perused the award in question. There was no documentary evidence produced by the petitioner corporation before the tribunal either for substantiating the contentions raised by it in reply to

the statement of claim or to rebut the evidence of the respondent workman. In view of these facts, according to my opinion, the tribunal was right in making such an award for regularization and absorption of off day reliever watchman. In making such an award, the tribunal has not committed any error and has assigned detailed reasons in support of such award after considering the documentary and oral evidence which was before it. Said award has been made by the tribunal after due application of mind. Learned advocate Mr. Shah has not been able to point out any jurisdictional error and/or procedural irregularity committed by the tribunal which would require interference of this court in exercise of the powers under Article 226 and/or 227 of the Constitution of India.

As regards the scope of interference, in case of IOB versus IOB Staff Workmen Union reported in 2000 SCC Lab. and Service, 471, the apex court has observed that the interference with the pure findings of fact and reappreciation of evidence is totally impermissible. The High Court is not having appellate powers and insufficiency of evidence or another view is possible has been held to be no ground for interference with the order of the lower authority. Similarly, recently, in case of Sugarbhai M. Siddiq versus Ramesh S. Hankare, reported in 2001-8 SCC 477, the apex court has examined the scope of powers under Article 226/227 of the Constitution of India and has held that the High court must ascertain whether such court or tribunal is having jurisdiction to deal with the matter or not and whether the order in question is vitiated by procedural irregularity or not. In the instant case, learned advocate Mr. Shah has not been able to point out any procedural irregularity or that the award in question is vitiated by procedural irregularity. He has also not been able to point out that the labour court was not having the jurisdiction to deal with the matter.

Recently, in 2002 scope of jurisdiction under Article 226 and/or 227 has been examined by the apex court in case of Ouseph Mathai and Others versus M. Abdul Khadir reported in (2002) 1 SCC page 319. In the said decision, the apex court has held that the jurisdiction under Article 227 of the Constitution cannot be invoked, as a matter of right. As regards the scope of jurisdiction under Article 227 of the Constitution of India, it has been held that mere wrong decision is not a ground for exercise of jurisdiction under Article 227. The apex court has held that the High Court may intervene

under Article 227 only where it is established that the lower court or tribunal has been guilty of grave dereliction of duty and flagrant abuse of power, which has resulted in grave injustice to any party.

Recently, in case of Roshan Deen versus Preeti Lal reported in (2002) 1 SCC 100, as regards the purpose of powers conferred on High Court under Article 226 and 227, the apex court has observed that the purpose is to advance justice, not to thwart it. It has been further observed that even where justice is the by product of an erroneous interpretation of law, High Court ought not to wipe out such justice in the name of correcting the error of law. In para 12 of the said decision, the apex court has observed as under:

> "12. We are greatly disturbed by the insensivity reflected in the impugned judgment rendered by the learned Single Judge in a case when judicial mind would be tempted to utilize all possible legal measures to impart justice to a man mutilated so outrageously by his cruel destiny. The High Court non suited him in exercise of a supervisory and extraordinary jurisdiction envisaged under Article 227 of the Constitution. Time and again this Court has reminded that the power conferred on the High Court under Articles 226 and 227 of the Constitution is to advance justice and not to thwart it (vide State of U.P. v. District Judge, Unnao). The very purpose of such constitutional powers being conferred on the High courts is that no man should be subjected to injustice by violating the law. The lookout of the High court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by product of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law."

In view of the above observations made by the apex court as regards powers of this Court in a petition under Articles 226 and 227 of the Constitution of India, according to my opinion, the Tribunal was right in making the award in question which is not suffering from the vice of jurisdictional error or procedural material irregularity and, therefore, the award in question does not require any interference of this Court in this

petition under Article 227 of the Constitution of India. No other contention was raised by Mr. Shah, learned advocate for the petitioner. There is no substance in this petition. Therefore, this petition is required to be rejected.

For the reasons recorded hereinabove, this petition is dismissed.

11.3.2002. (H.K. Rathod,J.)

Vyas